HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION No.10449 OF 2006

Between:

Nalla Mallesham …Petitioner

AND

Andhra Pradesh State Consumer Disputes
Redressal Commission, Hyderabad & others.
...Respondents

: O R D E R :

Counsel for the petitioner : Ms. P.Aruna

Counsel for respondent No.3 : Sri Venkat Raghuramulu
for Sri P.Ravi.

4th July, 2006

Per G.S.SINGHVI, C.J.

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing orders dated 29-6-2005 and 13-3-2006 passed by District Consumer Forum, Karimnagar (for short, 'the District Forum') and the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, the State Commission') respectively.

Respondent No.3, Adula Laxmi Devi filed a complaint under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') for issue of a direction to the opposite parties (petitioner herein) and respondent No.4, Gajangi Srinivasa Rao to pay Rs.60,000/- representing the maturity amount of FDR bearing Nos.501, 502, 504, 554, 556 and 558 issued in her favour in lieu of the deposit made with Navodaya Hire Purchase & Finance, Jagitial (for short, 'the firm'). She also claimed interest at the rate of 12% and costs of Rs.1,000/-. In her complaint, respondent No.3 alleged that she had deposited Rs.30,000/- with the firm on 15-7-1996 and 14-8-1996, and that in lieu thereof, the firm issued six FDRs with maturity dates as 14-7-2002 and 13-8-2002, but the opposite parties have failed to pay the maturity value amounting to Rs.60,000/-. In his counter, Gajangi Srinivasa Rao (respondent No.4 herein) pleaded that he is not the partner of the firm; that he did not issue the Fixed Deposit Certificates to the complainant; that the Fixed Deposit Certificates produced by the complainant are forged; that the son of the complainant has signed the Fixed Deposit Certificates in his capacity as Managing Partner of the firm; that the finance company is not in existence and, therefore, the question of his refunding the maturity amount does not arise, and that the son of the partner is liable to share the profit and loss of the firm.

On the pleadings of the parties, the District Forum framed the following points:

i) Whether the complainant is entitled to the amount?

ii) Whether there is deficiency of service on the part of the opposite parties No.1 and 2?

iii) To what relief?

After analysing the evidence produced by the complainant, the District Forum ruled that the opposite parties are liable to pay the maturity amount to the complainant. It further held that the failure of the opposite parties to pay the maturity amount constitutes deficiency in service. Accordingly, the complaint was allowed with a direction to the opposite parties to pay Rs.60,000/- to the complainant with interest at the rate of 9% per annum and costs of Rs.1,000/-.

Respondent No.4 challenged the order of the District Forum by filing an appeal under Section 15 of the Act, which was dismissed by the State Commission albeit without assigning cogent reasons. This is evinced from the penultimate paragraph of the order of the State Commission, which reads as under:

> "Aggrieved by the said order, opposite party No.2 preferred the appeal. The learned counsel submitted that the appellant has no way connected with the said firm. There are no documents filed on behalf of the appellant in the District Forum to establish that he is no way concerned with the firm. Though the appellant filed his counter he failed to substantiate his case with any documentary proof. Taking into consideration the facts and circumstances and the material on record, we see no reason to interfere with the order of the District Forum."

Ms. P.Aruna argued that the impugned orders are liable to be set aside because neither the District Forum nor the State Commission considered the jurisdictional issues and the objections taken in the counter filed on behalf of respondent No.4. She further argued that the complaint filed by respondent No.3 was liable to be dismissed only on the ground of non-impleadment of the firm with whom she is said to have deposited Rs.30,000/- on 15-7-1996 and 14-8-1996 and on whose behalf the Fixed Deposit Certificates are said to have been

issued. Learned counsel then pointed out that even though respondent No.4 had specifically pleaded that the Fixed Deposit Certificates were forged, the District Forum did not consider this issue and arbitrarily ordained payment of Rs.60,000/- to the complainant. She assailed the appellate order by arguing that even though the State Commission took cognizance of the objections taken in the counter of respondent No.4, the order passed by it is absolutely silent on the tenability of those objections.

Sri Venkat Raghuramulu supported the impugned orders and argued that the petitioner does not have the locus to challenge the same because he had not filed counter to the complaint.

We have given serious thought to the entire matter. In our opinion, the impugned orders are vitiated by error of law apparent on the face of the record and are liable to be quashed. Though it may appear repetitive, we deem it proper to observe that respondent No.4 had opposed the claim made by respondent No.3 by pointing out that the firm had not been impleaded as party and that the certificates produced by respondent No.3 had been fabricated by her son, who was Managing Partner of the firm. Unfortunately, neither the District Forum nor the State Commission adjudicated these objections which, if accepted, would have resulted in dismissal of the complaint filed by respondent No.3.

In view of the above, we do not consider it necessary to deal with the other points raised by the petitioner including the one that the District Forum did not have the jurisdiction to entertain the complaint filed by respondent No.3 in view of the provisions contained in the Andhra Pradesh Protection of Depositors and Financial Establishments Act, 1999.

In the result, the writ petition is allowed. The impugned orders are set aside with the direction that the District Forum shall decide the complaint filed by respondent No.3 afresh after considering the objections raised by respondent No.4. Respondent No.3 is given

liberty to file appropriate application for impleadment of the necessary parties and also for amendment of the prayer made in the complaint. The petitioner shall also be free to file reply to the amended complaint, which may be submitted by respondent No.3.

As a sequel to disposal of the main petition, WPMP.No.13105 of 2006 filed by the petitioner for interim stay is disposed of as infructuous.

G.S. SINGHVI, C.J.

July 4, 2006

G.V.SEETHAPATHY, J.

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